

The complaint

Mr O was unhappy with the performance of his pension plan and subsequently complained that Aviva Life & Pensions UK Limited (Aviva) invested his pension in a way he hadn't consented to. He also believes it was at fault for not providing advice or communicating clearly the need for advice. And its communication has been inconsistent and not comprehensive.

What happened

Mr O was unhappy with the performance of his pension plan after it suffered losses in 2022. He complained to Aviva but it did not uphold his complaint. It explained that Mr O had been invested in its 5 year lifestyling programme where as he got closer to the selected retirement age his funds were moved to funds that were traditionally lower risk. But unfortunately due to global factors, these funds had suffered losses.

Unhappy with this explanation Mr O complained to our service. Our investigator looked into matters and after some back and forth between Mr O, our investigator and Aviva it became clear that Mr O was disputing the fact he should've been invested in the lifestyling programme and he thinks Aviva failed in not telling him to seek advice.

Aviva sent us further evidence and this showed that in August 2010 Mr O wrote to Aviva (under the name of the previous firm it acquired) to say he was aware following a letter from it that his funds were to move into lower risk funds as part of a lifestyling programme. He asked did this apply to both of his policies. Aviva responded (on 27 August 2010) to say it did. Aviva had also sent a letter to Mr O explaining that his chosen 5 year lifestyle programme would be starting soon and no action was required unless he wished to change or cancel the investment programme. It recommended he seek advice from his financial adviser if he wished to do this.

In September 2015 Mr O wrote to Aviva to say he'd like to postpone his retirement date and remove the authority of an IFA previously added. Aviva responded to say it had removed the IFA and that his lifestyling programme was due to finish on his selected retirement date but if he chose to select a new retirement date the lifestyling plan would extend until that date. Mr O confirmed he would like to move his retirement date to December 2017.

Mr O said his response to this evidence was that in the letter of 27 August 2010, there is no reference to Aviva advising him that he should get independent advice. He believes this was against its internal policies and external rules. He says there was a requirement to explain whether this is the right course of action.

Aviva responded to say it had before and after this point, told Mr O he should consider getting independent financial advice. And at the outset this policy was setup in conjunction with his employer, so it didn't give Mr O the initial advice to take out the plan.

Mr O said that this proved his complaint should be upheld as in the absence of ongoing support from his employer it had a duty to tell him to seek alternative advice. He says Aviva had previously accidentally said this was the case and then backtracked.

The investigator didn't agree and Mr O said he believed Aviva had continually been misleading and they should've followed their own procedures and told him to take independent advice. He says other pension providers correspondence is comprehensive and complete and makes clear what is a customer's responsibility. He thinks they have demonstrated a lack of professionalism and he was prepared to accept the complaint closure if they'd offered a small gesture but he now wishes to take this all the way.

Our investigator formed the view that Aviva hadn't done anything wrong and it had informed Mr O of his investment strategy. As no resolution could be reached the case requires an ombudsman to decide it.

Before I go onto discuss the merits of the complaint, I'd like to say I'm sorry to hear of the personal difficulties Mr O has suffered in recent times.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I think its important to explain that for this complaint to be upheld, I'd need to conclude that Aviva had done something wrong *and* that in doing so Mr O had suffered a loss or his position had been changed.

Mr O's pension has suffered losses since economic turmoil hit markets in 2022. This caused losses across investment sectors but hit particularly hard were UK gilts and bonds. And Mr O's funds were in part invested in this sector at the time. Mr O appears to accept that by the nature of investing in these funds his fund value could drop but his complaint is that he shouldn't have been invested in them. And he believes Aviva had the responsibility to either give him advice or explain clearly that he should seek advice regarding his funds held with it.

Aviva has provided evidence that it did give Mr O clear information about his funds and where they would be invested. Mr O was told in 2010 his funds would be invested in the '5 year lifestyle' investment programme and that this would aim to move his investments into lower risk funds as he got closer to his retirement date. It said the exact percentages of the fund changes could be requested. It said if Mr O wished to change his investment programme he should contact his financial adviser.

When Mr O reached his selected retirement age and decided to extend it, he was told the lifestyling would continue until he reached his new retirement date. Mr O also received annual statements – the earliest we have a copy of being his 2016 statement that explained the lifestyling approach and the funds he was invested in.

So I cannot agree with Mr O that his funds were invested without his consent and knowledge. The evidence shows Mr O was told that lifestyling would be applied to his plan and what this entailed and he responded by letter to show his understanding. Mr O was given the opportunity to change the lifestyling option and chose not to do so. So I am satisfied that Mr O's funds were invested as per his instructions and he was given the relevant information about his options.

In relation to Mr O's point that Aviva ought to have advised him or needed to tell him he should seek advice, I don't think Aviva did anything wrong here either. Aviva couldn't give Mr O advice, as the pension provider its role was to provide Mr O with all the relevant information regarding his plan. And administer it line with is instructions or the instructions of those acting on his behalf. So Aviva couldn't advise Mr O on what to do.

Mr O hasn't been clear about when he thinks he should've been given advice or told to seek advice. However, Mr O did say that the letter of 27 August 2010 where Aviva confirmed the lifestyling was going to apply, didn't state he should seek advice. He therefore thinks Aviva is in the wrong and his complaint should be upheld. But I disagree, Aviva didn't need to tell Mr O to seek advice in every bit of communication it had with him. And I can see Aviva sent a letter dated 16 August 2010 and prior to the response Mr O is referring to, where it told him his chosen lifestyling programme will now start to gradually move his investments into different funds with the aim of lowering the risk. At the end of the letter it recommends Mr O should seek advice if he is considering making any changes. So I think Aviva was fair in the information it gave here.

Furthermore whilst we don't have evidence of communication before this point, the latter communication shows that Aviva did remind Mr O of the importance of seeking advice a number of times and every year within the annual statement. And even if I took the view it made an error in not telling Mr O to seek advice, I'd need to consider whether this would've made a difference to his position. The evidence suggests it wouldn't have, as it did tell Mr O a number of times he should seek advice – and he chose not to. Mr O did have contact with an adviser in 2015 but decided not to go ahead with taking advice from it.

Aviva has told us that the plan was set up by his employer (at the time) and they were responsible for the investment strategy. I can see his employer made contributions to the plan and so this supports this statement that it was set up by his employer.

I understand Mr O's disappointment with the recent performance of his pension with Aviva. But the evidence indicates it invested his money in line with the investment programme attached to his plan and that this was communicated clearly to him. Aviva had no responsibility to, nor could it, provide him with advice. And it did tell him he could seek advice but Mr O, as was his right, chose not to do so.

Mr O has also said that Aviva hadn't been as comprehensive or complete with the documentation he received as other providers. It didn't make clear what was his responsibility for example. I've looked at the annual statements and other documentation sent to Mr O and I think Aviva were fairly comprehensive in the information provided. And it was made clear that it was Mr O's responsibility to instruct it of any changes he wished to make to his plan. For example the 2016 statement said:

'Since you started your plan, your circumstances may have changed, or perhaps you have new or different plans for retirement. We don't want your retirement income to fall short, and your yearly review is a good opportunity to check that you are saving enough...

As you approach retirement, you have important decisions to make about how and when to take your pension benefits. We will write to you explaining your options no later than four months before your retirement date. Alternatively, please let us know if you would like any details before then.

What you should do now

- *Read through the enclosed items, including the 'notes and assumptions'.*
- *Think about whether your plans for retirement have changed, or if any changes to your circumstances might affect them.*
- *Remember that if you contribute as much as you can afford within HM Revenue & Customs limits, you will be making the most of current tax relief rules and allowances.*
- *It's important that you make the right choices for your personal circumstances, so we recommend you talk to your financial adviser about your retirement aims. This might include discussing changes to your plan's investment funds, paying more into your plan*

or perhaps changing your retirement date...

We are unable to give financial advice, but we are happy to help with any queries you may have. If you would like advice, please contact your financial adviser. If you do not currently have an adviser, you can find one in your area online via www.unbiased.co.uk.

So I think Aviva was clear that Mr O was responsible for making sure his plan met his current circumstances and it was for him to review it to make sure that it was.

With regards to his investment programme his statement said:

'Lifestyle investment programme

Your plan is invested in the 5 year lifestyle investment programme which stops at age 67. This is designed to move your investments into lower risk funds as you approach retirement.

This approach gives your plan more potential in its early years while helping to reduce the effects of any dramatic falls in the stock market in the later years when your plan has less time to recover. Please note there is no guarantee that the strategy will prove beneficial to your pension fund.

The switch process to gradually move your plan into lower-risk investments has already started. If you think the lifestyle investment programme is no longer suitable for you, it is possible to opt out. Please contact us if you want to do this. If you are happy to remain in the lifestyle investment programme you do not need to take any action.

You can find further details of the lifestyle investment programme in your plan's documentation. To help you consider your options we strongly recommend that you take financial advice.

Advantages

- *The investment programme offers an alternative to having to change your investments independently as you head towards retirement.*
- *During the period leading up to your retirement, your pension fund is moved from funds with a greater exposure to the stock market into more cautious investments. This helps reduce your exposure to risk from stock market fluctuations.*
- *Your investment programme can be amended if you choose to take your benefits earlier or later than planned.*
- *You can choose to leave the investment programme at any time.*

Disadvantages

- *There is no guarantee that the investment programme will prove beneficial to your pension fund.*
- *The value of your investments, even in lower risk funds, can fall as well as rise and the value of your pension fund is not guaranteed.*
- *Taking your retirement benefits earlier or later than planned may have an impact on your investment programme and may mean that it is no longer suitable for your individual circumstances.'*

Mr O received an explanation of the investment programme and its aims but was also informed that it would not necessarily be beneficial. He was also told within the statement where his funds would be invested and that he could leave the investment programme at any time. And that any changes to his retirement plans may mean that the investment

programme was no longer suitable for him. So I think Aviva gave Mr O the relevant information about his fund and his options regarding it. It also explained it could not give him advice and that he should consider getting independent financial advice if he wished to make any changes to this. So Mr O ought to have been aware that it was his responsibility to make decisions about whether his plan was right for him and not Aviva's.

Ultimately the investment programme was designed to lower the risk of his funds and reduce Mr O's exposure to stock market fluctuations, this was in-line with Mr O's chosen investment programme. But due to unexpected market changes unfortunately what were previously fairly stable market sectors became some of the most volatile. This issue was widespread across the sector and isn't due to any errors that Aviva made. Aviva did explain to Mr O that investing in this way may not be beneficial and it gave no guarantees his funds wouldn't suffer volatility.

I appreciate it must have been distressing for Mr O to suffer losses so near to his planned retirement date but for the reasons explained I do not think Aviva needs to do anything to put things right.

My final decision

For the reasons explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 August 2024.

Simon Hollingshead
Ombudsman